



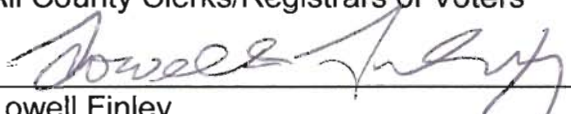
DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT
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December 30, 2008

County Clerk/Registrar of Voters (CC/ROV) Memorandum #08331

TO: All County Clerks/Registrars of Voters

FROM:


Lowell Finley
Deputy Secretary of State, Voting Systems Technology and Policy

RE: Recounts: Proposed Regulations

The Secretary of State, under the authority vested in the Secretary by Section 15601 of the Elections Code proposes to adopt regulations in Title 2, Division 7, Chapter 8 of the California Code of Regulations governing the conduct of election recounts. Further information and the text of the proposed regulations are provided in the three attachments and are available on our website at http://www.sos.ca.gov/elections/elections_recountregs.htm.

If you have any questions, please contact me at lowell.finley@sos.ca.gov or by phone at (916) 653-7244.

Attachments (3)

TITLE 2. ADMINISTRATION

DIVISION 7: SECRETARY OF STATE

The Secretary of State, under the authority vested in the Secretary by Section 15601 of the Elections Code proposes to adopt regulations in Title 2, Division 7, Chapter 8 of the California Code of Regulations governing the conduct of election recounts.

The Secretary of State proposes the following regulatory action: Adopt Sections 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20840, 20841, and 20842, of Chapter 8 of Division 7 of Title 2 of the California Code of Regulations.

AUTHORITY AND REFERENCE

Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15600 and 15601, Elections Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Elections Code Sections 15600 through 15634 establish the statutory framework for the conduct by a local elections official of a recount of ballots cast in a California ballot measure or public office election.¹ Sections 19200 through 19216 give the Secretary of State exclusive authority to examine voting systems and approve or withhold approval for their use in elections in the state. In Section 15601, the Legislature directed the Secretary of State to adopt regulations to specify the procedures for recounting ballots cast using each voting system approved for use in the state.

After reviewing the voting systems currently approved for use in California elections, the Secretary of State determined that a single set of regulations would be suitable for all approved voting systems. The proposed regulations were drafted for consistency with the Elections Code and with the goal of providing a single, clear and comprehensive set of rules and instructions for recounts. Providing all necessary information in a single

¹ Elections Code Section 320 defines “elections official” as follows:

"Elections official" means any of the following:

- (a) A clerk or any person who is charged with the duty of conducting an election.
- (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.”

“Voting system” is defined by Elections Code Section 362 as “any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast or tabulate votes, or both.”

All statutory references are to the Elections Code, unless otherwise indicated. The regulations of the Secretary of State are contained in Sections 19001 through 22610.4 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 7 of the California Code of Regulations, unless otherwise indicated.

location avoids confusion for elections officials, candidates, ballot measure proponents and opponents and voters, who would otherwise need to refer to the Elections Code or other documents.

Proposed regulation 20810 would declare that the purpose of the proposed recount regulations is to establish standards and procedures for conducting voter-requested recounts of votes cast for all elections in the state.

Proposed regulation 20811 would establish definitions for key terms used in the proposed recount regulations.

Proposed regulation 20812 would specify that any voter may request a recount by complying with the requirements of Elections Code Sections 15620, 15621 or 15623; require the elections official to verify that the person making the request is a registered voter; and permit any other voter, during the recount or within 24 hours after completion of the recount, to request the recount of any precincts not recounted under the original request. Regulation 20812 tracks the requirements of sections 15620, 15621 and 15623 of the Elections Code and is included in the proposed regulations to provide a single, clear and comprehensive set of rules and instructions for recounts.

Proposed regulation 20813 would require the elections official to produce relevant material for examination by the recount requestor in response to a written request prior to the completion of recounting; define “relevant material” broadly to include ballot envelopes, electronic records of votes, voting system logs, results of logic and accuracy testing, event logs from polling places, partial and final vote tally results, and video recordings and logs related to election security. Proposed regulation 20813 elaborates upon and makes specific the requirement in section 15630 of the Elections Code that the voter requesting a recount shall, upon request, be permitted to examine as part of the recount “[a]ll ballots, whether voted or not, and any other relevant material” This regulation is necessary because different elections officials have interpreted the term “relevant material” differently. The definition of “relevant material” incorporates the materials held by the Superior Court to fall within the scope of that term as used in Elections Code section 15360 in *COUNTY OF ALAMEDA. et al. v. AMERICANS FOR SAFE ACCESS et al.*, Alameda County Superior Court Case No. RG04-192053, *appeal pending*, Court of Appeal, 1st Civ. No. A121390.

Proposed regulation 20814 would authorize the elections official to determine the order in which precincts are to be recounted unless the order is specified in the recount request, and permit the requestor to request in writing a change in the order of precincts, subject to approval by the elections official. Regulation 20814 clarifies and makes specific the authority of the elections official to determine the order in which precincts are to be recounted if no order has been specified by the voter requesting the recount, as permitted by section 15622 of the Elections Code. The Secretary of State also determined that the funds and time expended in a recount could be minimized by allowing the requesting voter to request a change in the order of precincts after the recount had commenced, subject to approval by the elections official.

Proposed regulation 20815 would specify the method by which the elections official estimates, and the requestor deposits in advance, each day's costs to conduct the recount; require provision of deposit receipts; require refund of unexpended deposit amounts to the requestor; and authorize the elections official to terminate the recount for failure to make timely deposits. This portion of Regulation 20815 clarifies and makes specific the requirements in section 15624 of the Elections Code and is included in the proposed regulations to provide a single, clear and comprehensive set of rules and instructions for recounts. Proposed regulation 20815 would clarify the provisions of section 15630 of the Elections Code by specifying that the elections official must estimate, and the requestor must pay in advance, the costs necessary to produce relevant material.

Proposed regulation 20816 would specify requirements for the location chosen by the elections official to conduct the recount, to ensure that representatives of interested parties, bona fide associations of citizens and media organizations may observe the recount. Proposed regulation 20816 would also authorize the elections official to limit to no more than 10 the number of observers representing bona fide associations of citizens and media organizations, selected in a manner to give each entity an equal opportunity to participate. These requirements are necessary to ensure that the elections official conducts the recount in a facility with sufficient space to accommodate all those entitled to observe "any or all phases of the election" under Elections Code section 15004. The part of regulation 20816 authorizing the elections official to limit the number of observers from citizen organizations and media organizations tracks the language of Elections Code section 15004. This part of Regulation 20816 is necessary to ensure that the proposed regulations provide a single, clear and comprehensive set of rules and instructions for recounts.

Proposed regulation 20817 would require each elections official, within six months of the effective date of the proposed regulations, to establish written security measures for recounts, including a requirement for a minimum of two recount board members to perform critical security processes; chain of custody controls; signature verification of electronic voting paper trail records, voted, spoiled and unused ballots and all "relevant material"; serialization of tamper-evident seals applied to voting system components; and permitting, upon request, authorized recount observers to inspect the integrity of externally visible seals used to secure recount materials. Regulation 20817 is necessary to ensure that comprehensive security practices are established that will ensure the integrity of ballots and other election materials during the recount process. The regulation permits each local elections official to develop written security measures tailored to the local jurisdiction's facilities, resources and existing procedures. The regulation covers specific security practices that the Secretary has determined to be necessary for comprehensive security through review of best practices in the field and the results of the Top-To-Bottom Review of voting systems conducted in 2007.

Proposed regulation 20818 would require the local elections official, prior to the recount, to determine the number of recount boards required for timely completion, appoint the

members of each four-person recount board, compile precinct tallies and running tallies, and determine whether additional personnel are required. Regulation 20818 tracks the requirements of section 15625 of the Elections Code and is included in the proposed regulations to provide a single, clear and comprehensive set of rules and instructions for recounts. Proposed regulation 20818 would also require one supervisor for every two recount boards, a staffing level the Secretary of State has determined to be necessary through review of best practices in the field and consultation with local elections officials.

Proposed regulation 20819 would require the elections official to establish and post the daily schedule for the recount, and prohibit a recount board from stopping for a break or lunch while recounting a precinct. Regulation 20819 clarifies and makes specific the requirement in section 15628 of the Elections Code for posting the schedule for the recount. This regulation is necessary to make the posted schedule useful to the interested parties and public by specifying the details, such as hours of operation, lunch and break times, and the specific locations for posting.

Proposed regulation 20820 would authorize the elections official to require interested parties, such as the requestor, candidates for the office or proponents or opponents of a ballot measure subject to recount, to appoint a representative as a spokesperson through whom questions are channeled, and require observers to log in and wear identification badges. Proposed regulation 20820 would also prohibit requestors, interested parties, representatives and observers from interfering with the recount, assisting in recount procedures, touching voting system components or ballots and other recount materials, or talking to recount workers while they are conducting recount activities. The regulation would authorize the elections official to deny entry to any person who fails to comply with these requirements. Regulation 20820 is necessary to clarify and make specific the requirement in Elections Code section 15625 that a recount shall be conducted under the supervision of the elections official. The regulation specifies that the elections official may maintain effective control over the proceedings by limiting the number of persons permitted to speak on behalf of interested parties and by requiring an attendance log and identifying badges and by excluding those who do not comply. Regulation also clarifies and makes specific the prohibition in Elections Code section on touching or handling of recount materials by unauthorized persons.

Proposed regulation 20821 would require the elections official, within six months of the effective date of the recount regulations, to develop a written policy providing reasonable media access to the recount location, including use of cameras or audio or video recording devices in a manner that will not interfere with the recount. This regulation clarifies and makes specific the requirement in section 15629 of the Elections Code that recounts be conducted in public. The regulation permits each local elections official to develop written media access rules tailored to the local jurisdiction's facilities, resources and procedures. Regulation 15629 is necessary to make it possible for the general public to obtain independent information about the recount and is based on best practices of elections officials in California as well as in states such as Minnesota that encourage highly transparent and well-publicized recount proceedings.

Proposed regulation 20822 would require the elections official to announce publicly at the end of each day the results of the tally of precincts tallied that day and the cumulative recount tally. Proposed regulation 20822 would also require the elections official, in elections in which the results of the completed recount change the outcome of an election, to post the recount results publicly and refund all monies deposited for the recount by any requestor in whose favor the recount changed the outcome of the election. In local contests, the proposed regulation would require the elections official to recertify the results of the recounted contest and send a copy of the recertification to the public official or governing body that declares the results of the election subject to recount. In a contest for statewide office, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Court of Appeal, the proposed regulation would require the elections official to transmit one copy of the recount results to the Secretary of State. Regulation 20822 tracks the requirements of sections 15624 and 15632 of the Elections Code and is included in the proposed regulations to provide a single, clear and comprehensive set of rules and instructions for recounts. Regulation 20822 also clarifies and makes specific the requirement to post recount results by requiring daily announcement of single-day and cumulative results. This requirement is necessary to facilitate meaningful observation pursuant to regulation 20816 and meaningful media coverage pursuant to regulation 20821.

Proposed regulation 20823 would provide the procedure by which a challenged ballot is handled, and a final determination made and recorded by the elections official as to whether the challenged ballot will or will not be added to the count, and would require the elections official to make that determination on the same day the ballot was challenged. Regulation 20823 clarifies and makes specific the requirements of section 15631 of the Elections Code, permitting ballots to be challenged during a recount. It requires resolution of challenged ballots at the end of each day in an area separate from where the recount is being conducted. These requirements are necessary to avoid confusion and mixing of ballots.

Proposed regulation 20830 would establish the procedures for recounts conducted using the same type of vote tabulating device used in the election, conducted as nearly as possible using the same methods used to tabulate ballots originally, and would require the elections official to report separately the results of the recount for each precinct subject to recount, including the number of ballots undervoted and overvoted. At the conclusion of the tabulation, the regulation would require a public logic and accuracy test of each tabulation device used in the recount, with the results of the test and the test deck used in the test available for inspection on request by the requestor, spokespersons and observers. Regulation 20830 clarifies and makes specific how a recount conducted by means of the voting system used originally must be conducted if the requestor selects that method, as permitted by section 15627 of the Elections Code. The requirement to report results by precinct, including undervotes and undervotes, ensures that the results of the recount are presented in a form useful to the interested parties. To increase confidence in recount

results, regulation 20830 also requires post-recount testing of the tabulation devices used to confirm their accuracy.

Proposed regulation 20831 would establish procedures for manual recounts generally and require that vote by mail and early-voted ballots be recounted separately from ballots cast in a polling place on Election Day. Regulation 20831 clarifies and makes specific how a manual recount must be conducted if the requestor selects that method, as permitted by section 15627 of the Elections Code. It requires the elections official to instruct and provide documentation to the recount boards on how to interpret and count votes consistently. This requirement is necessary to ensure the application of unbiased, uniform standards for what constitutes a vote, in compliance with state and federal law. Regulation 20831 also tracks the requirement of section 15625 of the Elections Code that each recount board have four-members and is included in the proposed regulations to provide a single, clear and comprehensive set of rules and instructions for recounts.

Proposed regulation 20832 would establish procedures for manual recounts by the recount boards specifically in “Vote for One” contests, including pre-count sorting into ballots that were not voted for the contest (under-voted), ballots that were over-voted for the contest, and ballots that were voted for the contest, sorted by candidate or position. Regulation 20832 clarifies and makes specific the requirement of section 15625 of the Elections Code, by specifying the roles and responsibilities of each of the four members of a recount board. These requirements are necessary to ensure uniformity in procedures used by all county elections officials, a matter of particular importance in recounts of contests voted upon in more than one county. The Secretary of State determined that these procedures were necessary through review of best practices in the field and consultation with local elections officials.

Proposed regulation 20833 would establish an iterative procedure for manual recounts in “Vote for Multiple” contests, and is otherwise similar to proposed regulation 20832. The iterative procedures are necessary to ensure accuracy and avoid double counting or failure to count any of the votes cast on the ballot. Proposed regulation 20833. The Secretary of State determined that these procedures were necessary through review of best practices in the field and consultation with local elections officials.

Proposed regulation 20840 would establish requirements and procedures for recounts on direct recording electronic voting systems using electronic vote results, including a requirement for a pre-count public logic and accuracy test of each direct recording electronic voting system used in the recount. The pre-recount test is necessary to ensure that the equipment used in the recount meets the same logic and accuracy requirements as the equipment used originally and that there has been no degradation of accuracy during the election and canvass periods.

Proposed regulation 20841 would establish requirements and procedures for recounts of votes cast on a direct recording electronic voting system based on an automated scan and tabulation of the voted ballots directly from the voter verified paper audit trail record, a method that could be employed only if the Secretary of State has tested and approved the

automated scan method as part of the approval of the voting system. No automated scan system has been presented for approval. The proposed regulation would also require a pre-count public logic and accuracy test of each direct recording electronic voting system used in a recount employing this method. The pre-recount test is necessary to ensure that the equipment used in the recount meets the same logic and accuracy requirements as the equipment used originally and that there has been no degradation of accuracy during the election and canvass periods.

Proposed regulation 20842 would establish requirements and procedures for recounts of votes cast on a direct recording electronic voting system by manually counting the voter verified paper audit trail records. The requirements and procedures are similar to those in proposed regulation 20832 for manual recounting of votes cast on paper. Also included are special requirements and procedures uniquely applicable to voter verified paper audit trails: verifying the zero-results tapes printed before opening the polls, and noting but not counting paper audit trail records for ballots that were cancelled or cancelled and revoked. The Secretary of State determined that these procedures were necessary through review of best practices in the field and consultation with local elections officials.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Cost or savings to any state agency:** None.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.
5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None. This proposed regulation merely proposes to implement, interpret or make specific existing requirements and procedures for election recounts as set forth in the Elections Code. The proposed regulation, therefore, has no impact directly affecting business.
7. **Cost impacts on a representative private person or businesses:** None. The Secretary of State's office is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

8. Adoption of these regulations will not:

- (A) create or eliminate jobs within California;
- (B) create new businesses or eliminate existing businesses within California;
- or
- (C) affect the expansion of businesses currently doing business within California.

9. Significant effect on housing costs: None.

10. Effect on small business: None. This proposed regulation merely proposes to implement, interpret or make specific existing requirements and procedures for election recounts as set forth in the Elections Code. The proposed regulation, therefore, has no impact directly affecting small business.

CONTACT

Any inquiries should be made to Lowell Finley, Office of the Secretary of State, 1500 11th Street, 6th Floor, Sacramento, CA 95814; telephone (916) 653-7244; e-mail lfinley@sos.ca.gov. Back-up contact: Pam Giarrizzo, Office of the Secretary of State, 1500 11th Street, 6th Floor, Sacramento, CA 95814; telephone (916) 653-7244; e-mail pgiarrizzo@sos.ca.gov.

CALIFORNIA CODE OF REGULATIONS

TITLE 2. DIVISION 7. CHAPTER 8.

SECRETARY OF STATE

NOTICE IS HEREBY GIVEN that the Secretary of State intends to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Secretary of State proposes the following regulatory action: Adopt Sections 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20840, 20841, and 20842, of Chapter 8 of Division 7 of Title 2 of the California Code of Regulations.

AUTHORITY AND REFERENCE

Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.
Reference: Sections 15600 and 15601, Elections Code

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Elections Code Sections 15600 through 15634 establish the statutory framework for the conduct by a local elections official of a recount of ballots cast in a California ballot measure or public office election.¹ Sections 19200 through 19216 give the Secretary of State exclusive authority to examine voting systems and approve or withhold approval for their use in elections in the state. In Section 15601, the Legislature directed the Secretary of State to adopt regulations to specify the procedures for recounting ballots cast using each voting system approved for use in the state. The Secretary of State drafted a single set of proposed regulations applicable to all approved voting systems.

¹ Elections Code Section 320 defines “elections official” as follows:

“Elections official” means any of the following:

- (a) A clerk or any person who is charged with the duty of conducting an election.
- (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.”

“Voting system” is defined by Elections Code Section 362 as “any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast or tabulate votes, or both.”

All statutory references are to the Elections Code, unless otherwise indicated. The regulations of the Secretary of State are contained in Sections 19001 through 22610.4 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 7 of the California Code of Regulations, unless otherwise indicated.

Proposed regulation 20810 would declare that the purpose of the proposed recount regulations is to establish standards and procedures for conducting voter-requested recounts of votes cast for all elections in the state.

Proposed regulation 20811 would establish definitions for key terms used in the proposed recount regulations.

Proposed regulation 20812 would specify that any voter may request a recount by complying with the requirements of Elections Code Sections 15620, 15621 or 15623; require the elections official to verify that the person making the request is a registered voter; and permit any other voter, during the recount or within 24 hours after completion of the recount, to request the recount of any precincts not recounted under the original request.

Proposed regulation 20813 would require the elections official to produce relevant material for examination by the recount requestor in response to a written request prior to the completion of recounting; define “relevant material” broadly to include ballot envelopes, electronic records of votes, voting system logs, results of logic and accuracy testing, event logs from polling places, partial and final vote tally results, and video recordings and logs related to election security.

Proposed regulation 20814 would authorize the elections official to determine the order in which precincts are to be recounted unless the order is specified in the recount request, and permit the requestor to request in writing a change in the order of precincts, subject to approval by the elections official.

Proposed regulation 20815 would specify the method by which the elections official estimates, and the requestor deposits in advance, each day’s costs to conduct the recount; require provision of deposit receipts; require refund of unexpended deposit amounts to the requestor; and authorize the elections official to terminate the recount for failure to make timely deposits. Proposed regulation 20815 would also require the elections official to estimate, and the requestor to pay in advance, the costs necessary to produce relevant material.

Proposed regulation 20816 would specify requirements for the location chosen by the elections official to conduct the recount, to ensure that representatives of interested parties, bona fide associations of citizens and media organizations may observe the recount. Proposed regulation 20816 would also authorize the elections official to limit to no more than 10 the number of observers representing bona fide associations of citizens and media organizations, selected in a manner to give each entity an equal opportunity to participate.

Proposed regulation 20817 would require each elections official, within 6 months of the effective date of the proposed regulations, to establish written security measures for recounts, including a requirement for a minimum of two recount board members to perform critical security processes; chain of custody controls; signature verification of electronic voting paper trail records, voted, spoiled and unused ballots and all “relevant material”; serialization of tamper-evident seals applied to voting system components; and permitting, upon request, authorized recount observers to inspect the integrity of externally visible seals used to secure recount materials.

Proposed regulation 20818 would require the local elections official, prior to the recount, to determine the number of recount boards required for timely completion, appoint the members of each four-person recount board, compile precinct tallies and running tallies, and determine whether additional personnel are required. Proposed regulation 20818 would also require one supervisor for every two recount boards.

Proposed regulation 20819 would require the elections official to establish and post the daily schedule for the recount, and prohibit a recount board from stopping for a break or lunch while recounting a precinct.

Proposed regulation 20820 would authorize the elections official to require interested parties, such as the requestor, candidates for the office or proponents or opponents of a ballot measure subject to recount, to appoint a representative as a spokesperson through whom questions are channeled, and require observers to log in and wear identification badges. Proposed regulation 20820 would also prohibit requestors, interested parties, representatives and observers from interfering with the recount, assisting in recount procedures, touching voting system components or ballots and other recount materials, or talking to recount workers while they are conducting recount activities. The regulation would authorize the elections official to deny entry to any person who fails to comply with these requirements.

Proposed regulation 20821 would require the elections official, within six months of the effective date of the recount regulations, to develop a written policy providing reasonable media access to the recount location, including use of cameras or audio or video recording devices in a manner that will not interfere with the recount.

Proposed regulation 20822 would require the elections official to announce publicly at the end of each day the results of the tally of precincts tallied that day and the cumulative recount tally. Proposed regulation 20822 would also require the elections official, in elections in which the results of the completed recount change the outcome of an election, to post the recount results publicly and refund all monies deposited for the recount by any requestor in whose favor the recount changed the outcome of the election. In local contests, the proposed regulation would require the elections official to recertify the results of the recounted contest and send a copy of the recertification to the public official or governing body that declares the results of the election subject to recount. In a contest for statewide office, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Court of Appeal, the proposed regulation would require the elections official to transmit one copy of the recount results to the Secretary of State.

Proposed regulation 20823 would provide the procedure by which a challenged ballot is handled, and a final determination made and recorded by the elections official as to whether the challenged ballot will or will not be added to the count, and would require the elections official to make that determination on the same day the ballot was challenged.

Proposed regulation 20830 would establish the procedures for recounts conducted using the same type of vote tabulating device used in the election, conducted as nearly as possible using the same methods used to tabulate ballots originally, and would require the elections official to

report separately the results of the recount for each precinct subject to recount, including the number of ballots undervoted and overvoted. At the conclusion of the tabulation, the regulation would require a public logic and accuracy test of each tabulation device used in the recount, with the results of the test and the test deck used in the test available for inspection on request by the requestor, spokespersons and observers.

Proposed regulation 20831 would establish procedures for manual recounts generally and require that vote by mail and early-voted ballots be recounted separately from ballots cast in a polling place on Election Day.

Proposed regulation 20832 would establish procedures for manual recounts by the recount boards in “Vote for One” contests, including pre-count sorting into ballots that were not voted for the contest (under-voted), ballots that were over-voted for the contest, and ballots that were voted for the contest, sorted by candidate or position.

Proposed regulation 20833 would establish procedures for manual recounts in “Vote for Multiple” contests, similar to those in proposed regulation 20832.

Proposed regulation 20840 would establish requirements and procedures for recounts on direct recording electronic voting systems using electronic vote results, including a requirement for a pre-count public logic and accuracy test of each direct recording electronic voting system used in the recount.

Proposed regulation 20841 would establish requirements and procedures for recounts of votes cast on a direct recording electronic voting system based on an automated scan and tabulation of the voted ballots directly from the voter verified paper audit trail record, a method that could be employed only if the Secretary of State has tested and approved the automated scan method as part of the approval of the voting system. The proposed regulation would require a pre-count public logic and accuracy test of each direct recording electronic voting system used in a recount employing this method.

Proposed regulation 20842 would establish requirements and procedures for recounts of votes cast on a direct recording electronic voting system by manually counting the voter verified paper audit trail records.

PUBLIC HEARING

The Secretary of State will consider the proposed regulations at a public hearing on March 4, 2009, at the offices of the Secretary of State, 1500 11th Street, Sacramento, California, commencing at 10:00 a.m.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State’s office. Written comments

concerning the proposed rulemaking must be received by 5:00 p.m. on March 13, 2009. The Secretary of State's office will consider only comments received by that time. Submit written comments to the contact indicated below.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Secretary of State's office must determine that no reasonable alternative has been identified that would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State's office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the address indicated below. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed regulations and the initial statement of reasons. The initial statement of reasons includes the express terms of the proposed action and the information upon which the proposed action is based. Copies are posted on the Secretary of State's web site at <http://www.sos.ca.gov/business/business.htm> and may also be obtained from the contact indicated below.

AVAILABILITY OF THE TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person indicated below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Secretary of State's office may adopt the proposed regulations substantially as described in this notice. If the Secretary of State's office makes modifications that are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State's office adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact indicated below. The Secretary of State's office will accept written comments on the modified regulations for 15 days after the date on which they are made available generally.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Cost or savings to any state agency:** None.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.
5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.
This proposed regulation merely proposes to implement, interpret or make specific existing requirements and procedures for election recounts as set forth in the Elections Code. The proposed regulation, therefore, has no impact directly affecting business.
7. **Cost impacts on a representative private person or businesses:** None. The Secretary of State's office is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
8. **Adoption of these regulations will not:**
 - (A) create or eliminate jobs within California;
 - (B) create new businesses or eliminate existing businesses within California; or
 - (C) affect the expansion of businesses currently doing business within California.
9. **Significant effect on housing costs:** None.
10. **Effect on small business:** None. This proposed regulation merely proposes to implement, interpret or make specific existing requirements and procedures for election recounts as set forth in the Elections Code. The proposed regulation, therefore, has no impact directly affecting small business.

CONTACT

Any inquiries should be made to Lowell Finley, Office of the Secretary of State, 1500 11th Street, 6th Floor, Sacramento, CA 95814; telephone (916) 653-7244; e-mail lfinley@sos.ca.gov. Back-up contact: Pam Giarizzo, Office of the Secretary of State, 1500 11th Street, 6th Floor, Sacramento, CA 95814; telephone (916) 653-7244; e-mail pgiarizzo@sos.ca.gov.

TEXT OF PROPOSED REGULATIONS

Add Sections 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20840, 20841, and 20842, of Chapter 8 to Division 7 of Title 2 of the California Code of Regulations.

Chapter 8. Recounts

Article 1. General Provisions.

§ 20810. Purpose.

(a) The purpose of this chapter is to establish standards and procedures for conducting recounts of votes cast for all elections in the State of California requested pursuant to Chapter 9 of Division 15 of the California Elections Code.

(b) This chapter applies to the Secretary of State and all elections officials within the State of California in conducting recounts of votes cast for all elections in this state.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15600 and 15601, Elections Code.

20811. Definitions.

(a) “Election data media device” means a card, cartridge, USB flash memory stick or other digital storage device that stores ballot information and/or voting results information in a non-volatile form.

(b) “Governing body” includes, but is not limited to, a city council or a county board of supervisors.

(c) “Interested party” includes, but is not limited to, the requestor and those persons identified in Elections Code section 15628.

(d) “Observer” means any representative of a qualified political party, representative of a bona fide association of citizens, or other person who wishes to observe the recount proceedings subject to space limitations.

(e) “Qualified political party” means only a political party qualified to participate in the last primary election.

(f) “Requestor” means a voter who requests a recount or any other voter who, during the conduct of a recount and for 24 hours thereafter, requests the recount of additional precincts not recounted as a result of the original request.

(g) “System redundant vote data” means each and every electronic record of election results for ballots cast in an election on one or more voting system units that is stored in any part of the voting system other than the jurisdiction’s central electronic repository of results for that election.

(h) For purposes of these regulations, “vote tabulating device” means any piece of equipment, other than a voting machine operated by levers or other mechanical means, that compiles a total of votes cast by means of ballot card sorting, ballot card scanning,

paper ballot scanning, electronic data processing or a combination of that type of equipment.

(i) “Voter” means any elector who is registered under the Elections Code.

(j) “Vote for One” means an election for an office in which the voter may select only one candidate.

(k) “Vote for Multiple” means an election for an office in which the voter may select two or more candidates.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 358, 359, 361, 15620, 15621, 15623, and 15625, Elections Code.

§ 20812. Who May Request Recount.

(a) Any voter may, pursuant to Elections Code sections 15620, 15621 or 15623, request a recount.

(b) Upon receipt of a request for recount, the elections official shall verify that the person requesting the recount is registered to vote in this state.

(c) Any time during the conduct of a recount and for 24 hours thereafter, any voter other than the original requestor may, pursuant to Elections Code sections 15620, 15621 or 15623, request the recount of any precincts not recounted as a result of the original recount request.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15620, 15621 and 15623, Elections Code.

§ 20813. Material To Be Examined; Relevant Material.

(a) Requests to examine relevant material shall be made by the requestor in writing and shall be received by the elections official before the recounting of ballots is complete.

(b) For purposes of this section, “relevant material” includes but is not limited to vote by mail and provisional ballot envelopes, voting system redundant vote data, election data media devices, audit logs, system logs, pre- and post-election logic and accuracy testing plans and results, polling place event logs, precinct tally results, central count tally results, consolidated results, surveillance video recordings and chain of custody logs, including logs of security seals and access to election-related storage areas. The elections official shall produce any relevant material requested.

(c) The elections official may establish reasonable guidelines for the production and examination of relevant material.

(d) The elections official shall communicate any request to examine ballots or other relevant material to each interested party or to his or her representative. The interested parties and their representatives appointed pursuant to section 20816(a)(1) may be present during the examination of ballots or other relevant material.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15629 and 15630, Elections Code.

§ 20814. Order of Recount.

(a) If no order in which precincts are to be counted is specified in the request for recount, the elections official shall determine the counting order of precincts.

(b) The requestor may request, in writing, a change to the order of precinct counting determined by the elections official or specified in the requestor's initial request for a recount. Any change in the counting order of precincts is subject to the approval of the elections official.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Section 15622, Elections Code.

§ 20815. Cost of Recount.

(a) The elections official shall estimate the costs necessary to produce relevant material and the requestor shall pay an advance deposit of the estimated amount prior to the materials being produced.

(b) The requestor shall pay the advance deposit using cash, cashier's check or money order. No personal checks will be accepted.

(c) At least one day prior to the commencement of the recount, the elections official shall determine the estimated cost for the first day of the recount and shall advise the requestor in writing of the advance deposit required. The requestor shall, before the recount is commenced, deposit this amount with the elections official. The same procedure shall be followed for each subsequent day of the recount.

(d) The requestor shall pay the advance deposit using cash, cashier's check or money order. No personal checks will be accepted.

(e) All actual costs of the recount resulting from the requestor's particular recount request shall be directly recoverable from the requestor and may include, but are not limited to, supervision, security guards, members of the elections official's staff and administrative costs.

(f) The elections official shall issue a receipt for payment of the deposits and shall maintain a daily log of estimated costs, deposits, actual expenses and amount of refund due, if any.

(g) If the advance deposit is not paid by a particular requestor, the elections official will terminate the recount of precincts specified by that requestor.

(h) When the recount is completed or discontinued, any amount collected from a voter requesting the recount, which exceeds the actual costs, shall be refunded to that requestor.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15624 and 15625, Elections Code.

§ 20816. Location of Recount.

(a) The recount shall take place in a location to be determined by the elections official. The elections official shall choose a location that is large enough to accommodate the presence of the following:

(1) Not more than two representatives of each interested party and each qualified political party to check and review the preparation, testing and operation of the tabulating devices, and to attend any or all phases of the recount; and

(2) Not more than two representatives of any bona fide association of citizens or a media organization to check and review the preparation, testing and operation of the tabulating devices, and have the representatives in attendance at any or all phases of the recount.

(3) In the event the elections official determines that more than two recount boards are necessary, each interested party may designate one additional representative for every additional recount board appointed, solely for the purpose of viewing the recount of ballots and challenging ballots.

(b) The elections official may limit the total number of representatives employed pursuant to subdivision (a)(2) in attendance to no more than 10 by a manner in which each interested bona fide association of citizens or media organization has an equal opportunity to participate. Any representatives employed and in attendance pursuant to subdivision (a)(1) or (a)(3) shall not be subject to the limit specified in this subdivision.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 5100, 15004, 15625, 15628 and 15629, Elections Code.

§ 20817. Security.

(a) The elections official shall, within six (6) months of the effective date of these regulations, establish written security measures for recounts to ensure the integrity of the recount proceedings. The security measures shall include, but not be limited to, chain of custody controls and signature-verified documentation for all voter verified paper audit trail records, voted, spoiled and unused ballots, and all “relevant material” as described in section 20813(b).

(b) The security measures must also require a minimum of two members of a special recount board to perform or directly observe critical security processes, such as sealing and locking equipment between recount sessions, verifying the integrity and authenticity of security locks and seals, and setting up voting equipment a requestor requests to examine as relevant material. Where application of tamper-evident seals directly to a system component is required to detect unauthorized access to the component between recount sessions, those seals must be serialized.

(c) Upon request, all persons authorized to observe the recount pursuant to section 20816 must be permitted to observe and inspect, without physical contact, the integrity of all externally visible security seals used to secure all ballot materials, voter verified paper

audit trail records, relevant material as described in section 20813(b), and recount documentation in a time and manner that does not interfere with the conduct of the recount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15624 and 15625, Elections Code.

§ 20818. Staffing.

(a) Prior to the commencement of the recount, the elections official shall determine the number of special recount boards necessary to complete the recount in a timely manner. The elections official shall appoint four voters of the county to each special recount board.

(b) There shall be one supervisor for every two special recount boards. The supervisor's function is to enforce the rules and transport ballots and reports. The supervisor shall not resolve challenges.

(c) The elections official or his or her designee shall compile all precinct tallies and keep a running tally.

(d) The elections official shall determine whether additional personnel is necessary for tasks such as producing relevant material, sorting or retrieving materials, or checking signatures.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Section 15625, Elections Code.

§ 20819. Scheduling.

The elections official shall set the daily schedule for the recount, including hours of operation, breaks and lunch times, in accordance with the requirements of Elections Code section 15626. A special recount board shall not stop for a break or lunch while recounting a precinct. The schedule shall be posted in a conspicuous place at the office of the elections official and at the location where the recount takes place, if different.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625 and 15626, Elections Code.

§ 20820. Spokespersons and Observers.

(a) Any person may observe the recount proceedings, subject to space limitations of the recount location selected by the elections official pursuant to section 20816.

(b) Upon request by the elections official, each interested party shall appoint one of his or her representatives to serve as a spokesperson authorized to make decisions with respect to the recount on behalf of the interested party, or the interested party may serve as his or

her own spokesperson. When accompanied by an elections official, the spokesperson shall have access to all areas where ballots are tabulated.

(c) Questions other than ballot challenges shall be routed through the spokesperson, who shall then direct the question to the elections official or his or her designee. Official discussions with any interested party concerning resolution of questions shall include each interested party or his or her spokesperson.

(d) The elections official may require any requestor, interested party, representative, or observer of the recount proceedings to log in and receive an identification badge before entering the recount location. If required, identification badges shall be worn at all times and returned to the elections official at the end of the day.

(e) Requestors, interested parties, representatives, and observers may not interfere in any way with the conduct of the recount, touch any voting system components, ballots, tally sheets or other special recount board materials, sit at the official recount worktables, place any material on the official recount worktables, talk to recount workers while they are processing ballots or other recount materials or assist in recount procedures.

(f) The elections official may deny entry to the recount location to any person who fails to comply with the requirements of this section.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625, 15629 and 15630, Elections Code.

§ 20821. Media, Photography and Recording Devices.

(a) The elections official shall, within six (6) months of the effective date of these regulations, develop a written policy providing reasonable access to the recount location by the media, and the use of cameras or audio or video recording devices in the recount location in a manner that will not interfere with the recount.

(b) No media interviews shall be permitted in the recount location while the recount is being conducted.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625 and 15629, Elections Code.

§ 20822. Results of Recount.

(a) At the end of each day, the elections official shall announce publicly the results of the tally of each precinct recounted that day and the cumulative recount tally.

(b) If after a recount has been completed as specified in Elections Code section 15632 the outcome of the election changes, the elections official shall do all of the following:

(1) Post the results of the recount in a highly visible public location in the elections official's office.

(2) In a contest other than a contest for statewide office, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal:

- (A) Recertify the contest being recounted with the new official count for each precinct, including updating the canvass, the official bulletin, and the statement of vote, as needed.
- (B) Send a copy of the recertification to the public official or governing body that declares the results of the election subject to the recount, in order that they may adopt the recertification and re-declare the results of the election.
- (3) In a contest for statewide office, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, transmit one complete copy of all results of the recount to the Secretary of State.
- (4) Refund all monies deposited for the recount by any requestor in whose favor the recount changed the outcome of the election.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15624, 15625, 15632 and 15633, Elections Code.

§ 20823. Challenges.

(a) A challenged ballot shall be set aside with a notation indicating the precinct number, the method by which it was originally counted for the official canvass, e.g., direct recording electronic voting system, scanner or hand count, the challenge number assigned to the ballot, the reason for the challenge, and the identity of the person making the challenge.

(1) A ballot that can be isolated, including rejected unopened vote by mail or provisional ballots, may be challenged and added to the count if the elections official determines that the ballot was properly cast.

(2) Ballots that were counted in the official canvass, including counted vote by mail or provisional ballots, may be challenged only on grounds of disqualifying distinguishing marks or some other grounds visible on the face of the ballot so that the ballot can be isolated and removed from the count if the elections official determines that the ballot was not properly cast.

(b) Resolution of challenged ballots shall take place in a segregated area within the recount location, separate from that being used to perform the recount, as determined by the elections official, to avoid confusion and mixing of ballots.

(c) Challenges shall be resolved each day after all special recount boards complete their work, or more often if necessary, as determined by the elections official, but in any event before the conclusion of all recount proceedings. The determination of the elections official on a challenge shall be final. The elections official shall maintain a record of each challenge and the determination on each challenge.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625 and 15631, Elections Code.

Article 2. Recount of Votes Cast On Paper Ballots and Tallied By a Scanning Device.

§ 20830. Recounts Using the Vote Tabulating Device Used In the Election.

(a) Prior to conducting a recount of ballots using a vote tabulating device, a logic and accuracy test shall be conducted on each vote tabulating device to be used in the recount, applying the same test method used prior to the election subject to the recount pursuant to Elections Code section 15000. The test shall be conducted publicly, subject to a limit on the number of public observers due to space limitations consistent with section 20816. The results of the test, as well as the test deck used, shall be made available to the requestor, spokespersons and observers for their inspection before the commencement of the recount.

(b) Recount tabulation of voted ballots on a vote tabulating device shall, to the maximum extent possible, be conducted using the same methods used to tabulate the voted ballots originally, and shall include the following:

(1) Vote tabulating devices used for the recount shall be set to election mode and not test mode.

(2) A zero-results tape shall be printed from each vote tabulating device and verified by the requestor and spokespersons prior to any recount tabulation on that device.

(3) To preserve the original vote count record, a backup of the election results shall be made and the same memory media that was used in the election shall be prepared to capture the recount vote results.

(4) Each voted ballot shall be fed through and scanned by the designated vote tabulating device.

(5) Ballots that cannot be read by the designated vote tabulating device shall be corrected or duplicated in accordance with Elections Code sections 15208, 15210 and 15211.

(6) All vote by mail ballots cast in a precinct subject to recount, including early-voted ballots cast for that precinct, shall be tabulated for the recount on the same type of vote tabulating device that was used for the original tabulation. All ballots cast in a polling place on Election Day in a precinct subject to recount shall be tabulated on the same type of vote tabulating device, but not the same individual device, that was used for voting at the polling place.

(c) Once all eligible ballots cast in a polling place for a precinct have been scanned and tabulated by the designated device, the device shall be “closed” so as to accept no further ballots for that precinct and the vote results printed from that device and made available for public inspection. If supported by the voting system, the following steps shall also be taken:

(1) Recount vote results of ballots cast in a polling place for each precinct subject to recount shall be uploaded to the voting system’s central tabulation and reporting application; and

(2) The elections official shall report separately the recount vote results for each precinct subject to recount. Such reporting will include the number of ballots undervoted and overvoted in the challenged contest.

(d) At the conclusion of tabulation of all precincts designated for the recount, a logic and accuracy test shall be conducted on each tabulation device used in the recount, applying the same test method used prior to the election subject to the recount pursuant to Elections Code section 15000. This test shall be conducted publicly within the view of the requestor, spokespersons and observers. The elections official shall make the results of the logic and accuracy test, as well as the test deck used for the test, available for inspection by the requestor, spokespersons and observers at the conclusion of the recount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15633, 19220, 19360, 19370, 19380, 19381, 19382, 19383 and 19384, Elections Code.

§ 20831. Manual Recounts Generally.

(a) One of the four special recount board members shall read the ballot and call out the vote cast for the contest subject to recount on that ballot; one shall observe that the correct call was made, and two members shall each separately and independently record the votes as called out.

(b) Prior to beginning the actual manual recount, the elections official shall instruct all members of the special recount boards, requestor, interested parties, representatives and observers on the procedures to be followed for the recount and shall provide them with documentation on how to interpret and read the votes cast on the ballot, consistent with federal and state law and the State Uniform Vote Count Standards.

(c) Vote by mail and early-voted ballots cast in a precinct subject to recount shall be tabulated separately from ballots cast in a polling place on Election Day.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15101-15110, 15276, 15290 and 15625, Elections Code.

§ 20832. Manual Recounts, “Vote for One” Contests.

Manual recount tabulation on a voting system in a “Vote for One” contest is subject to the following requirements:

(a) Prior to counting the ballots, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct may be separated into stacks that do and do not contain the contest. Those that contain the contest should be sorted as follows:

(1) Ballots that were not voted for the contest (under-voted);

(2) Ballots that were over-voted for the contest; and

(3) Ballots that were voted for the contest, sorted by candidate or position.

(b) Starting with the voted ballots, one member of the special recount board shall state the candidate or position for which the vote was cast making sure the requestor, interested parties and their representatives can observe the contest subject to recount.

- (c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of either 10 or 25, at the discretion of the elections official.
- (d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out the same number of counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.
- (e) An authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the spokesperson for closer inspection. At no time may any spokesperson touch or come into physical contact with any of the ballots. Tallying will resume once the spokesperson has completed the inspection.
- (f) Tallying shall continue in this manner, until all stacks of voted ballots have been tallied.
- (g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes shall each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they shall each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or position in the recounted contest, the recount of that precinct shall be deemed complete and the results reported to the jurisdiction's chief elections official. If the special recount board members announce different vote totals for any candidate or vote position in the recounted contest, the recount tallies recorded will be examined. If the difference can be explained it shall be corrected on the tally sheet. A written report shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct shall start over.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

§ 20833. Manual Recounts, “Vote for Multiple” Contests.

Manual recount tabulation on a voting system in a “Vote for Multiple” contest is subject to the following requirements:

(a) Prior to counting the ballots for the contest subject to recount, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct may be separated into stacks that do and do not contain the contest. Those that contain the contest should be sorted as follows:

- (1) Ballots that were not voted for the contest (under-voted);
- (2) Ballots that were over-voted for the contest;
- (3) Ballots indicating a vote for the first candidate listed on the ballot for the contest; and

(4) Ballots that do not indicate a vote for the first candidate listed on the ballot for the contest.

(b) Starting with the voted ballots, one member of the special recount board shall state the candidate or position for which the vote was cast making sure the requestor, interested parties and their representatives can observe the contest subject to recount.

(c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of 10 (or 25).

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out 10 (or 25) counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.

(e) An authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the spokesperson for closer inspection. At no time may any spokesperson touch or come into physical contact with any of the ballots. Tallying will resume once the spokesperson has completed the inspection.

(f) Once all the votes for the first candidate have been recorded, the valid voted ballots shall be resorted into two stacks:

(1) Ballots that were voted for the second candidate in the contest; and

(2) Ballots that do not indicate a vote for the second candidate in the contest.

The ballots voted for the second candidate shall be calculated in accordance with (b) through (e) above. Tallying shall continue in this manner, until the votes for each candidate in the contest have been recounted and tallied.

(g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes will each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they will each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or position in the recounted contest, the recount of that precinct shall be deemed complete and the results reported to the jurisdiction's chief elections official. If the special recount board members announce different vote totals for any candidate or vote position in the recounted contest, the recount tallies recorded and announced will be examined. If the difference can be explained it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct will start over.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

Article 3. Recount Of Votes Cast On Direct Recording Electronic Voting Systems.

§ 20840. Recounts on Direct Recording Electronic Voting Systems Using Electronic Vote Results.

(a) Prior to conducting the actual recount of ballots, a logic and accuracy test shall be conducted, using the same method used prior to the election subject to the recount pursuant to Elections Code section 15000, on each direct recording electronic voting system being used in the recount. The test shall be conducted publicly within the view of the requestor, spokespersons and observers, subject to a limit on the number of public observers due to space limitations consistent with section 20816. The results of that test, as well as the test deck used, shall be made available for their inspection by the requestor, spokespersons and observers before the commencement of the recount.

(b) Electronic recount tabulation on a direct recording electronic voting system shall be based on a re-import and re-tabulation of the vote results from the electronic media originally used to capture and transfer the vote results from the direct recording electronic voting system devices into the election management system for that voting system. Once all vote results have been imported into the election management system from each direct recording electronic voting system device used to cast and record votes in the precincts designated for recount, the elections official shall generate a report for each such precinct detailing the aggregated direct recording electronic voting system vote results for the recounted contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 19220, 19381, 19382 and 19383, Elections Code.

§ 20841. Automated Recounts on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Records.

(a) The voter requesting the recount of votes cast on a direct recording electronic voting system may request that it be conducted based on an automated scan and tabulation of the voted ballots directly from the voter verified paper audit trail record. An automated scan shall not be used unless the Secretary of State has tested and approved the automated scan method as part of the certification of the voting system.

(b) Prior to conducting the recount of voter verified paper audit trail records from the direct recording electronic voting system, a logic and accuracy test shall be conducted, using the same method used prior to the election subject to the recount pursuant to Elections Code section 15000, on each direct recording electronic voting system device to be used in the recount. The test shall be conducted publicly within the view of the requestor, spokespersons and observers. The elections official shall make the results of that test, as well as the test deck used, available for their inspection at the conclusion of the recount.

(c) Once all vote results have been scanned and captured from each direct recording electronic voting system device used to cast and record votes in the precincts designated for recount, the elections official shall generate a report for each such precinct detailing

the aggregated direct recording electronic voting system vote results for the recounted contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 19201, 19220, 19250, 19251 and 19253, Elections Code.

§ 20842. Manual Recounts of Ballots Cast on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Records.

The manual recount, using voter verified paper audit trail records, shall include the following:

- (a) The voter verified paper audit trail record shall be re-spoiled if necessary to permit the recount to begin at the start of the record.
- (b) One member of the special recount board shall be designated to review the voter verified paper audit trail record and call out the vote results for the recounted contest from that record. This member shall begin by reviewing and verifying the zero-results tape printed prior to the opening of the polls and before any votes were captured. The zero-results tape shall also be reviewed and verified by the supervisor of the special recount board and by the requestor and spokespersons.
- (c) The board member designated to review and call out the vote results shall then proceed to review the voter verified paper audit trail records in succession, calling out each ballot in turn and stating how the ballot was voted in the challenged contest.
- (d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. After counting either 10 or 25 ballots (at the discretion of the elections official), the recorders shall confirm that their vote counts match exactly, the board member reviewing and calling out the vote results shall draw a distinct line on the continuous voter verified paper audit trail record between the individual voter verified paper audit trail record containing the 10th or 25th counted vote and the individual voter verified paper audit trail record for the next voted ballot, and the tally shall continue forward for the next 10 or 25 counted votes. If both recorders do not reach 10 or 25 additional votes on the same individual voter verified paper audit trail record, then the count for the last interval of voter verified paper audit trail records shall be stricken from their tally sheets and those voter verified paper audit trail records recounted.
- (e) The individual voter verified paper audit trail records shall be displayed to permit the requestor, spokespersons and observers to view the contest subject to recount, either directly or indirectly, as the voter verified paper audit trail record is reviewed and called. Voter verified paper audit trail records for ballots that were cancelled or cancelled and re-voted, shall be noted but not counted toward the vote results.
- (f) A requestor or an authorized spokesperson may request to inspect any voter verified paper audit trail record. Tallying shall be halted while the voter verified paper audit trail record is presented to the requestor or spokesperson for closer inspection. At no time may any requestor, interested party, representative or observer touch or come into physical contact with any of the voter verified paper audit trail records. Tallying shall resume once the inspection is completed.

(g) Tallying shall continue in this manner, until the entire continuous voter verified paper audit trail record has been reviewed and tallied.

(h) After all ballots of a direct recording electronic voting system have been reviewed and tallied from its voter verified paper audit trail records, the special recount board members who have been recording the votes shall independently calculate the total votes for each candidate or vote position on their tally sheets. When both have completed totaling, each shall announce his or her totals for that candidate or vote position. If both announce the identical vote total for each candidate or vote position in the recounted contest, the recount of those voter verified paper audit trail records shall be deemed complete and the recount shall proceed with the continuous voter verified paper audit trail record for the next direct recording electronic voting system with voted ballots for the challenged contest.

(i) If the special recount board members announce different vote totals for the candidate or position, the recount tallies recorded and announced for that candidate or position shall be examined. If the difference can be explained it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that candidate or position shall start over.

(j) Once all the voter verified paper audit trail records containing ballots for that precinct have been reviewed and tallied, the recount of that precinct shall be deemed complete and the results reported to the elections official.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 19250 and 19382, Elections Code.